

Reserved on : 01.03.2019

Pronounced on : 07.03.2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

C.R.P. (NPD) No.317 of 2011

Mr.Balaji

.. Petitioner

Vs.

Mrs.T.Jothi

.. Respondent

PRAYER: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act against the judgment and decree in R.C.A.No.933 of 2006 dated 03.12.2009 passed by the learned Judge of VIII Court of Small Causes, Chennai confirming the Order in R.C.O.P.No.2269 of 2002 dated 31.08.2006 passed by the learned Judge of XV Court of Small Causes, Chennai.

For Petitioner : Mr.T.S.Baskaran

For Respondent : Mr.N.Nagusah

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ORDER

Aggrieved over the concurrent finding of the Courts below in dismissing the petition filed for eviction on the ground for willful default, the present revision has been filed.

2. The brief facts leading to filing of this revision is as follows :

The respondent is a tenant in respect of the ground floor premises of the Door No.29, Nainiappa Street, Chindadripet, Chennai – 600 002 on a monthly rent of Rs.2000/-. The petitioner has become the owner of the premises by way of a settlement deed executed by his mother and grandmother. Prior to that, the respondent was paying rent regularly to the petitioner's mother till August 2002. Attornment notice has also been sent to the respondent by the mother of the petitioner on 03.10.2002. Even after that, the respondent has not paid the rent since 2002. Hence, the petition for eviction.

3. It is the contention of the respondent that she is not a tenant in the premises. She is a permissive occupant in respect of the petition portion and she was put in possession by the mother of the petitioner 9 years back by receiving a sum of Rs.85,000/- on the understanding that she shall occupy and enjoy the portion till the sum of Rs.85,000/- is refunded. She did not pay any rent to the said Valliammal. The

respondent has not paid any amount to Valliammal. Therefore, she has also replied to the legal notice dated 3.10.2012 and also sent a reply on 27.12.2012. Hence, it is the contention of the respondent that there is no landlord tenant relationship existed between the parties.

4. On the side of the petitioner, P.W.1 was examined and Ex.P.1 to Ex.P.10 were marked and on the side of the respondent, R.W.1 and R.W.2 were examined and Ex.R.1 to Ex.R.5 were marked. The learned Rent Controller has dismissed the application by holding that there is no landlord tenant relationship existed between the petitioner and the respondent. The first appellate authority has also confirmed the Order of the Rent Controller. As against which, the present revision has been filed.

5. The learned Senior Counsel appearing for the revision petitioner would contend that the respondent is originally a tenant under the mother of the petitioner. Thereafter, the property was settled in favour of the petitioner and the same was informed to the respondent by a letter of attornment dated 03.10.2002. The above letter has also been received by the respondent, but no reply was sent. The nature of rent payable by the respondent is also stated in the above letter. As the respondent failed to pay the rent, the petitioner had issued a legal notice dated 09.12.2002 and the respondent has sent a reply stating that there is no landlord tenant relationship existing between the petitioner and the respondent.

6. It is the contention of the learned Senior Counsel that after the execution of the settlement deed and the attornment letter, dispute arose between mother and son. The mother has cancelled the settlement unilaterally which was challenged by the petitioner and such cancellation is also held invalid in the Court. Taking advantage of the dispute between the mother and the son, the respondent has taken a defence in the petition that there was no landlord tenant relationship and in fact there was a suit in O.S.No.2169 of 2004 pending between the mother and son at the relevant point of time. In the petition, the respondent has been examined as R.W.2 to show that there is no landlord tenant relationship and filed Ex.R.4 said to have been executed by the mother of the petitioner on 02.01.2004. The fact remains that the above document has been created subsequently. The reply received from the RTI also clearly show that no stamp paper was sold on the particular day. Therefore, the above document cannot be given much importance. The fact remains that in the attornment letter, the mother has clearly informed the tenant to pay the rent of Rs.2000/- to the petitioner. Further, the evidence of respondent and the documents filed by her clearly show that she was a tenant in the property. She cannot take advantage over the dispute between the mother and the son and she is estopped from denying the title of the landlord. Hence, submitted that the Courts below have not considered the entire evidence and pleadings and prayed for allowing the revision.

7. Whereas the learned counsel for the respondent vehemently contended that the mother of the petitioner has been examined as R.W.2 and she has stated that

there is no landlord tenant relationship and the respondent was permitted to occupy the premises under Ex.R.4 under no rent and no interest basis. Hence, submitted that as long as there is no landlord tenant relationship, the respondent cannot be evicted. It is further contented that even to evict the tenant, there is no willful default. After giving notice, application should have been filed after two months. Whereas the application has been filed within two months from the date of legal notice. Hence, the petition is not maintainable. In support of his contentions, he has relied upon the judgment in **Chordia Automobiles Vs. S.Moosa and others** reported in **2000 (3) Supreme Court cases 282**.

8. It is the further contention of the learned counsel appearing for the respondent that Ex.R.4 is admissible in evidence. In support of the same, he has also relied upon the decision in **Sengappan Vs. Arumbatha Veda Vinayagar Temple, represented by its Hereditary Trustee. Arumbatha Vinayagam (died), Pondicherry and others** reported in **2000 (1) MLJ 198**.

9. Heard the learned Senior Counsel for the petitioner and the learned counsel for the respondent and perused the entire materials available on record.

10. This petition has been filed for eviction of the respondent on the ground that she has committed willful default and she has not paid rent from September 2002. It is the case of the petitioner that the respondent was a tenant under his mother and

paying a rent of Rs.2000/-. The property has been settled in favour of the petitioner and they have sent a letter of attornment to the respondent. Even thereafter, the respondent has not paid the rent. It is the specific contention of the tenant that she is not a tenant under the petitioner or his mother and she was allowed to continue in the suit property as she has paid a sum of Rs.85,000/- to the petitioner's mother under Ex.R.4, thereby continuing her possession.

11. In this regard, it is useful to refer Ex.P.5, legal notice sent on 11.08.1992 wherein the father of the plaintiff has issued a legal notice demanding rent from the respondent herein. The respondent admitting the tenancy, has sent a reply dated 19.08.1992 contending that she has paid the entire arrears to the mother of the petitioner. The above fact clearly indicate that the respondent was originally inducted into the property as a tenant. Now, it is her contention that there was no landlord tenant relationship between herself and the petitioner.

12. It is curious to note that the respondent relied upon Ex.R.4 and the evidence of R.W.2, mother of the petitioner. It is to be noted that before giving any credence to those documents and the evidence of R.W.2, it is relevant to record certain facts in this case. Infact, the mother and grandmother have executed the settlement deed in respect of the property in favour of the petitioner under Ex.P.1. It is not in dispute. Ex.P.2 is the letter dated 03.10.2002, both the mother and the grandmother of the petitioner have sent a notice of attornment to the respondent. Wherein, the mother of the petitioner has clearly stated that the respondent is a tenant

in respect of the portion in the ground floor on a monthly rent of Rs.2000/- and requested her to attorn the tenancy in favour of the petitioner herein and directed her to pay rent from 06.10.2006 onwards to the petitioner. This notice was infact received by the respondent. However, no reply, whatsoever, sent by the respondent. Thereafter, it appears that the dispute arose between the mother and the son. The mother appears to have unilaterally cancelled the settlement deed. However, grandmother has not joined in the above document. Thereafter, a defence was taken in the Rent Control proceedings by the respondent as if she was not a tenant and the mother of the petitioner has inducted her into possession by receiving a sum of Rs.85,000/- as per Ex.R.4.

13. It is further curious to note that Ex.R.4 came into existence after the letter of attornment. There is no whisper about Ex.R.4 document in the counter filed in the rent control proceedings on 05.03.2003. It is also to be noted that even in the reply notice sent by the respondent, he has not referred Ex.R.4. It is stated in the reply notice that her mother has received Rs.85,000/- free of interest and interest payable on the said sum shall be adjusted towards the rent payable by the respondent. In the above reply notice there is no reference to Ex.R.4. Though she took a defence that the mother of the petitioner had received a sum of Rs.85,000/- and the interest shall be adjusted towards the rent payable by her, absolutely, there is no reference with regard to Ex.R.4. The affidavit said to have been executed by the mother of the petitioner indicate that a sum of Rs.85,000/- has been received from the respondent. The reply

notice, Ex.R.3, clearly indicate that the respondent is in the premises only as a tenant. Even assuming that a sum of Rs.85,000/- is paid, the reply notice itself clearly indicate that the interest payable on the amount shall be adjusted towards the rent payable by the respondent. At any event, Ex.R.4 and the evidence of R.W.2 came after the dispute between the petitioner and his mother culminated into filing of the civil suit by the son challenging the action of his mother. Only at that stage, the mother has given evidence in favour of the respondent.

14. It is further curious to note that Ex.R.4 on the face of it appears that it is created subsequent to the Rent Control proceedings to non suit the petitioner with the connivance of his mother taking advantage of the litigation between the son and the mother. It is also to be noted that the evidence of the respondent and the reply notice sent in the year 1992 clearly indicate she was inducted as a tenant in the suit property very long back. It is also admitted in the evidence of the respondent that prior to Ex.R.4, her family members were tenant in the suit property and after the joint family has vacated, from 02.01.1994 she is in possession of the property on the basis of Ex.R.4. These facts have not even been pleaded in the counter and for the first time, it is stated in her evidence. Further, in Ex.R.4 also, there is no mention whether the earlier tenancy was terminated and others were evicted and she was permitted to occupy the premises. The above evidence also indicates that her family members were tenants in the property from the year 1978. Unless surrender of earlier tenancy is established by the respondent and new arrangement has been established, she

cannot deny the landlord tenant relationship. Moreover, her reply notice itself clearly indicate that she was a tenant and the interest on the so called advance amount paid by her was to be adjusted in the rent. Attornment notice also received by the respondent, which has not been replied. Therefore, once the contention of the respondent that she was in permissive possession is found to be false and she has taken advantage of the litigation between the mother and the son, the contention of the respondent that there is no landlord tenant relationship cannot be countenanced. In fact, she is estopped from denying the landlord tenant relationship. Her denial of the relationship is not a bonafide one.

15. The learned counsel appearing for the respondent referred to the judgment **Chordia Automobiles Vs. S.Moosa and others** reported in **2000 (3) Supreme Court cases 282**, wherein the Honourable Supreme Court has held that non payment of rent to be considered wilful default if the default continues beyond two months from the date of notice issued by the landlord. However, if the tenant files an application within two months, the default cannot be construed. Absolutely, there is no dispute with regard to the above judgment. In the above case, the Honourable Supreme Court taking note of the fact that the tenant had deposited the amount in the first hearing and has continued to do so has held that default is not a wilful. But here, in this case, the respondent has not paid the rent from September 2002. Even after filing of this petition, no amount has been deposited. Originally she was inducted as a tenant and

she has created certain documents and connived with the mother of the petitioner taking advantage of their dispute to contend that she was not a tenant. Such conduct is nothing but wilful default. Hence, the Courts below have not considered the entire evidence in appropriate manner and the respondent is certainly estopped from denying the tenancy without establishing surrender of earlier possession. Ex.R.4, which appears to be created, she cannot plead a different transaction. Hence, the respondent is a wilful defaulter and she is liable to be evicted from the premises.

16. Accordingly, this Civil Revision Petition is allowed and the Order of the Courts below is set aside. Two months time is granted to vacate the premises. No cost.

vrc

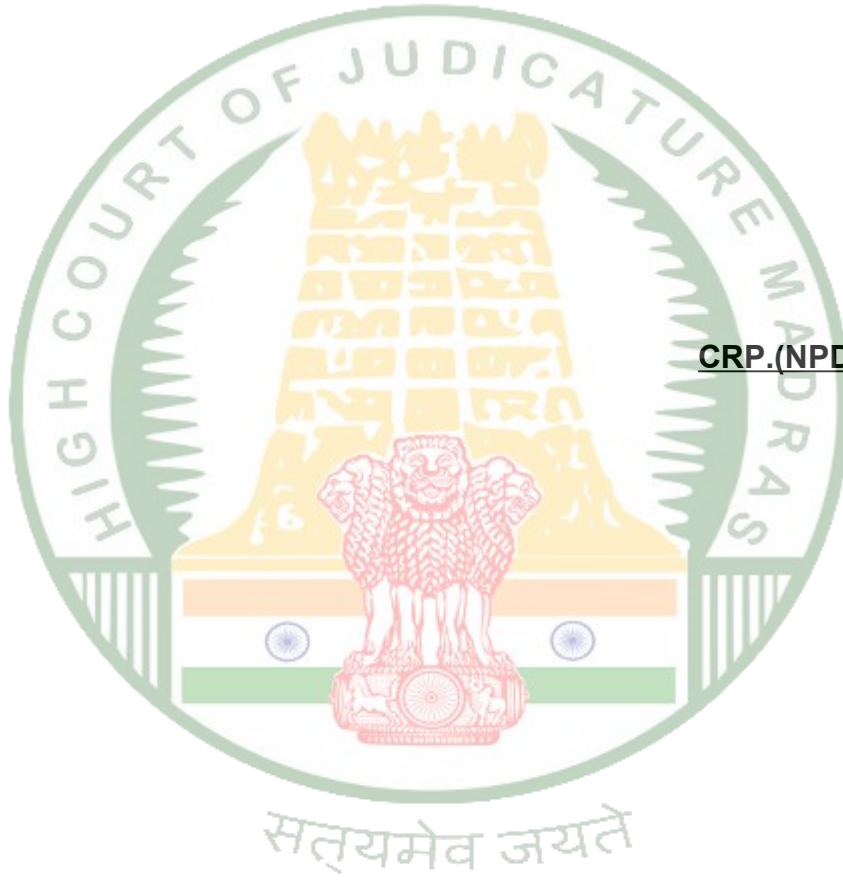
07.03.2019

To

1. The Judge,
VIII Court of Small Causes,
Chennai.
2. The Judge,
XV Court of Small Causes,
Chennai.

N.SATHISH KUMAR, J.

VRC



Order in

CRP.(NPD) No.317 of 2011

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07.03.2019

C.R.P.NPD.No.317 of 2011**N.SATHISH KUMAR,J.**

This matter is listed today under the caption 'for being mentioned' at the instance of the learned counsel appearing for the petitioner.

2. The learned counsel appearing for the petitioner would submit that in the order dated 07.03.2019, the respondent's name was typed as Mrs.Jothi instead of Mr.Jothi and the same has been typed in several places as 'she' instead of 'he'. In view of the same, wherever the respondent is mentioned as 'she', it should be referred as 'he' and in the cause title it should be reflected as Mr.Jothi instead of Mrs.Jothi.

3. Accordingly, Registry is directed to issue fresh order copy.

सत्यमेव जयते

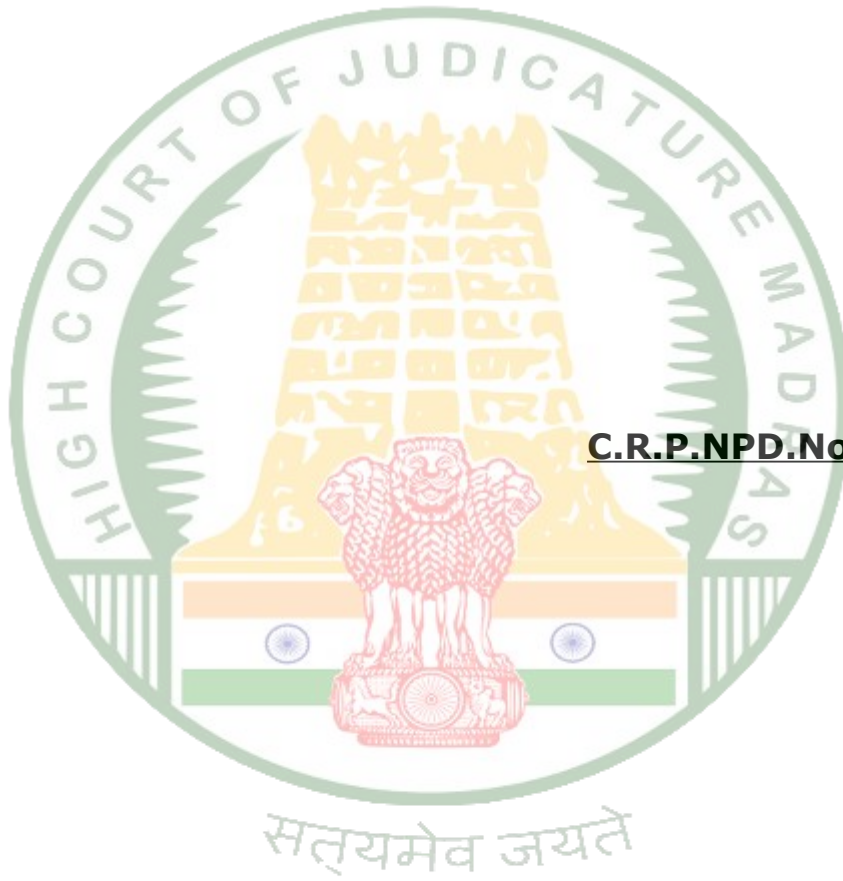
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20.06.2019

msv

N.SATHISH KUMAR,J.

msv



C.R.P.NPD.No.317 of 2011

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